REGISTERED No. D. 221

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 153] NEW DELHI, WEDNESDAY, JUNE 17, 1953

ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 3rd June, 1953

S.R.O. 1133.—WHEREAS the election of Shri Manphool Singh, as a member of the Legislative Assembly of the State of Rajasthan, from the Nohar constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Sahi Ram, S/o Shri Kalu Ram, Village Goluwala Niwadan, District Ganganagar;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, RAJASTHAN, BIKANER.

ELECTION PETITION No. 240 OF 1952

Shri Sahi Ram son of Shri Kaluram, resident of village Goluwalla Niwadan, District Ganganagar—*Petitioner*

Versus

1. Shri Manphool Singh S/o Shri Mota Ram, resident of Badopal, Tehsil Suratgarh, District Ganganagar.
2. Shri Satya Narain S/o Shri Ghanshyam Das, resident of Bhadra, Tehsil Bhadra, district Ganganagar.
3. Shri Mani Ram S/o Chhoga Ram, resident of Lakhasar, Tehsil Suratgarh, District Ganganagar.
4. Shri Bhagirath S/o Shri Ram Chander, resident of Panditanwali, Tehsil Suratgarh, District Ganganagar—*Respondents.*

Election petition under Section 81 of the Representation of the People Act, 1951, questioning the election of the respondent No. 1 from the Nohar constituency to the Rajasthan State Legislative Assembly in the general election held in 1951-52.

CORAM:

1. Shri M. P. Asthana—*Chairman.*
2. Shri M. C. Bhandari—*Member.*
3. Shri Goverdhandas T. Gajria—*Member.*

Petitioner through Shri Nanak Chand Pandit and Shri R. D. Goel, Advocates.

Respondent No. 1 through Shri Mukat Behari Lal Bhargava, Shri Suraj Karan Acharya, Shri Laxmi Narayan Purohit, and Shri Sri Narayan Purohit, Advocates, and Shri Bisheshwar Nath Bhargava and Kumari Kanta Khathuria Pleader.

Respondent No. 3 through Shri Jagan Nath Bandia, Pleader.

Respondent No. 4 absent.

JUDGMENT

1. This petition has been filed by one Sahi Ram, a defeated candidate, for declaration that the election of the respondent No. 1 Manphool Singh, from the Nohar Constituency in District Ganganagar, to the Rajasthan Legislative Assembly, held in 1951-52, is void. Besides the petitioner, the four respondents had also filed their nomination papers from the constituency in question, out of whom respondents Nos. 3 and 4 had withdrawn whereas the respondent No. 2 was defeated. The petitioner has challenged the election of the respondent No. 1, on various grounds mentioned by him in general in paras 5 to 7 and has mentioned the said grounds in detail in para 8 of his petition, which are as under:—

(1) That the result of the election has been materially affected by improper acceptance of the nomination paper of the respondent No. 1 as (a) he was and is a member of the Land Distribution Committee for Tehsil Suratgarh, which is an office of profit under the State of Rajasthan and as such was disqualified under Article 191(1) (a) of the Constitution, (b) he was and is a member of Joint Hindu family with his brother Mani Ram, who is a Lambardar and is holding an office of profit under the State Government of Rajasthan, and consequently the respondent No. 1 is disqualified under the same provisions of the constitution, (c) he applied for the correction of his name as it appeared in the electoral roll, which according to him did not answer his description correctly with the result that according to the petitioner, the respondent No. 1 is estopped from asserting that he is the same person whose name appears at serial number 33 of the said electoral roll, (d) the nomination paper of respondent No. 1 was not validly accepted by the Returning Officer in as much as the thumb mark of the seconder was not put in the presence of the Returning Officer nor was it attested by him as required by law with the result that it should have been rejected, (e) the nomination paper of the respondent No. 1 did not contain the full particulars in columns Nos. 8, 10, and 14 and, (g) the respondent No. 1 being a member of the District Vitran Committee was holding an office of profit and as such disqualified to become a member of the State Legislature.

(2) That the respondent No. 1 resorted to major and minor corrupt practices as detailed in the list attached to the petition either directly or through his agents, with his connivance and active support.

(3) That the respondent No. 1 exercised coercion, undue influence and caused undue influence on groups and sections of poor people and gave them promises with a view to get their votes, or to refrain them from voting for the petitioner.

(4) That no sanctity could be attached to the contents of the ballot bores which could be opened without tampering with their seals and actually a demonstration of this kind was given before the Returning Officer.

(5) That the respondent No. 1 and his agent have filed a false return of expenses in as much as they have concealed several items of expenditure and further have shown some of the items less.

2. The petitioner has filed along with his petition a list of corrupt and illegal practices alleged to have been committed by the respondent No. 1 which briefly are as under:—

(a) that the respondent No. 1 pursuaded the Naik community of Suratgarh Tehsil to vote for him and not for the petitioner or any other person by making an offer and promise in writing to them on 17th December, 1951 that he would get them allotted land if they voted for him *vide* his writing copy of which was filed and marked as Annexure "A" with the petition.

(b) That in consideration of the promised gratification of the allotment of land etc. and by giving threat of punishment to those who would not agree to vote for the respondent No. 1, the Naik community appointed Panches in their resolution, dated 16th December, 1951 at the instigation of and with the connivance of the respondent No. 1, to help or vote for the respondent No. 1, the failure of which will make each one of them liable to punishment. A copy of the resolution dated 16th December, 1951 has been filed with the petition as Annexure "B".

(c) That the respondent No. 1 and his workers with his connivance, held out promises, in his capacity as member of the Land Allotment and Vitran Committees for Suratgarh Tehsil of doing favours to persons who would vote for him.

(d) That the respondent No. 1 gave gratifications to his workers and voters beyond the expenses that may have actually been incurred by them.

(e) That the respondent No. 1 directly and indirectly interfered with the free exercise of the electoral rights of the Naik Community and other groups and persons, and induced them illegally to vote for him at Suratgarh and other places on 16th, 17th December 1951 and other dates during December, 1951 and January, 1952.

(f) That on 19th and 20th January, 1952, the respondent No. 1 procured lorries, jeeps and trucks himself and through other persons for the conveyance of electors from Vijaynagar and other places to Rampura polling station.

(g) That the respondent No. 1 himself and through his workers paid railway fare and diet money to the voters who came to vote for him from Vijaynagar and Jaitsar.

(h) That the respondent No. 1 incurred unauthorised expenditure and employed persons on payment beyond the number authorised in the rules and in contravention of the Act, amongst whom were Nano Ram, Ratti Ram, and Birbal of Jogiwalla Tehsil Ganganagar.

(i) That the respondent No. 1 sought and took the assistance, for the furtherance of the prospects of his election from Government servants, by making Ram Swarup Patwari, Sukha Ram Sawar and some other patwaris propagate for him, and made them sit at Badopal polling station to see and ensure that voters of that village cast their votes in his favour.

(j) That the respondent No. 1 employed fictitious persons to vote for him by false personation, out of whom are Utta son of Kesha who was caught red handed at Bisnasar polling station on 14th January 1952 and convicted by the S. D. M. Nohar on 2nd April, 1952.

(k) That the respondent No. 1 issued posters which did not bear on their face the name and address of the printer and publisher thereof including a poster headed in Hindi "Manphoolsingh Ko Vote Do".

(l) That the secrecy of the ballot was not maintained and the ballot boxes were not proof against being tampered with.

(m) That the respondent No. 1 has not shown true and full accounts in his return of election expenses.

(n) That the Presiding Officers of Suratgarh and Dhansia polling stations allowed the respondent No. 1 to have their votes cast for about one and a half hour after the scheduled time of polling to enable police constables and other officials who were on duty at other polling stations to come and cast their votes after finishing their duties

3. In the end the petitioner has craved for leave to apply for amendment of the list of particulars and corrupt practices as the Returning Officer refused to give him inspection of the return of election expenses filed by the respondent No. 1 nor had the petitioner sufficient time after its petition publication to give the necessary details.

4. Regarding the allegations contained in the petition the respondent No. 2 Satya Narain has said nothing except that he has added one more corrupt practice to the list of the petition *viz:* that the respondent No. 1 had issued a pamphlet in which, in order to deceive the electorate he had published that the respondent No. 2 had withdrawn and was no more in the contest. The respondent No. 3 also has admitted the contents of the petition. The respondent No. 1 who is the contesting respondent, has denied all the allegations regarding improper acceptance of his nomination paper, the corrupt practices, the holding of office of profit etc. except that he admitted that at one time he was a member of the Land Distribution Committee for Tehsil Suratgarh, but he has denied that he was a member of this Committee at the time of election. He has further alleged that the list of the particulars of corrupt practices etc. filed by the petitioner is not in accordance with the provisions of section 83(2) of the Representation of the People Act in as much as the petitioner has neither given the full details about the names of the parties who are alleged to have committed them,

nor the dates and the places of their commission. He has also alleged that the petition has not been properly presented as required by S. 81(2) of the Representation of the People Act, 1951, and the same is not within time and as such should be dismissed.

5. Before the framing of the issues, the learned counsel for the petitioner made an application under section 86(2) (a) and (b) of the Representation of the People Act, 1951, challenging the validity of the appointment of the chairman and the Advocate Member of this Tribunal, which was disposed of by an order dated 11th November, 1952 which is attached as Annexure A to this judgment. On the date fixed for framing of the issues, the learned counsel for the petitioner was asked to specify the items of expenditure objected to by him in the return of election expenses and also those which have been intentionally omitted by the respondent No. 1. He gave the following details regarding these items:—

(1) Rs. 2,000 were paid as hire of Motor No. 251 but receipt for Rs. 1,000 was taken.

(2) Rs. 2,000 were paid as hire of the motor belonging to Birbal Manniar of Jagewala whereas only Rs. 1,000 have been shown.

(3) Rs. 1,000 were paid as hire of the truck No. 575 which was not registered as passenger public carrier.

(4) Rs. 800 were paid to one Kanyalal Sharma, President of Nohar Congress Committee to bribe the voters.

(5) Rs. 500 worth petrol was purchased at Nohar by respondent No. 1 to be used for tours in connection with election.

(6) The rent of the house at Suratgarh from 4th January 1952 to 10th and 11th February 1952, at the rate of Rs. 5 per month has not been shown.

(7) The receipt of Rs. 312 as the hire charges for a loud speaker passed by Chetaram who is the uncle of the respondent No. 1 is false.

6. After having recorded the above statement, the Tribunal framed the following issues:—

Issue No. 1.—Was the nomination paper of the respondent No. 1 improperly accepted? If so, has it materially affected the result of the election?

Issue No. 2.—Is the respondent No. 1 guilty of the corrupt and illegal practices as alleged by the petitioner? If so, what is its effect?

Issue No. 3.—Was the respondent No. 1 disqualified to be a member of the Rajasthan State Legislative Assembly as alleged in ground No. 1 by the petitioner?

Issue No. 4.—Is the return of election expenses filed by the respondent No. 1 false and incomplete as alleged? If so, what is its effect?

Issue No. 5.—Was the secrecy of the ballot not maintained as alleged in ground No. 4? If so, what is its effect?

Issue No. 6.—Was the petition not properly presented as required by the provisions of section 81(2) of the Representation of the People Act, 1951 and as such is it liable to be rejected?

Issue No. 7.—Is the petition liable to be dismissed on the ground that it was not presented within time to the proper authority?

Issue No. 8.—To what relief, if any, is the petitioner entitled?

6 After the framing of the issues, an application for amendment of the list of particulars of corrupt and illegal practices filed with the petition, was made on behalf of the petitioner, and the same after hearing the learned counsels for both the parties, was dismissed by us on 18th November, 1952, by an order which is annexure B to this Judgment.

REASONS

Issue No. 1.—The petitioner's contention is that the nomination paper of the respondent No. 1 has been improperly accepted, but it should have been rejected by the Returning Officer as (1) he was a member of the Land Distribution and Vitran Committees, of tehsil Suratgarh, and as such was holding an "Office of Profit" within the provisions of Article 191(1) (a) of the Constitution, (2) he was and is a member of the Joint Hindu family with his brother Mani Ram who is a Lambardar, and as such is a holder of office of profit under the State Government of Rajasthan and (3) the thumb mark of the seconder of the nomination paper of the respondent No. 1 *viz*; Baga, was not put in the presence of the Returning Officer nor was it attested by him as required by rule 2(1) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951.

(8) So far as the allegations of the petitioner regarding the respondent No. 1 being a member of the Land Distribution and Vitran Committees, are concerned, it has been denied by the respondent No. 1 that he was a member of such Committee on the date of his nomination though he admits that some time before that he was, but then he ceased to be a member of any such Committee. In order to attach a disqualification to the candidature of the respondent No. 1 on this score, it was the duty of the petitioner to have produced some direct evidence either documentary or oral to show that the respondent was a member of this Committee on the date of his nomination. The learned counsel for the petitioner has argued that since the respondent No. 1 has admitted that he was a member of the Land Distribution Committee of Tehsil Suratgarh, but ceased to be so some time before his nomination, burden should be upon him to show that he was not a member on the date of nomination. We regret we cannot accept his contention. Since there is no evidence to prove that the respondent No. 1 was a member of such committee on the date of his nomination, we hold that the respondent No. 1 was not subject to any disqualification on this score.

(9) The second ground of disqualification urged against the respondent No. 1 is that he was a member of the District Vitran Committee on the date of his nomination, and still continues as such with the result that he is disqualified to be a candidate under Art. 191(1) (a) of the Constitution. The respondent No. 1 has admitted that he was and is a member of this committee, but he denies that thereby he is holding an office of profit. No rules or regulations framed by the Government of Rajasthan to show as to what are the duties and functions of the members of these committees have been produced in this case. But a similar point arose before us in case of Chandra Nath *Versus* Kunwar Jaswantsingh, reported in the Government of India Gazette Extraordinary dated 20th January, 1953 at page 165, whether membership of a Vitran Committee is an office of profit within the meaning of Art. 191(1) (a) of the Constitution and we, after considering the various rules, made for the working of such committees by the Rajasthan Government have come to a conclusion that the membership of this committee is not an office of profit under the law to entail a disqualification to a candidate to become a member of the State Legislature, and we have no reason to hold a different view in this case, as nothing contrary has been proved or shown.

(10) The next point urged by the learned counsel for the petitioner relating to the disqualification of the respondent No. 1 is that his brother Maniram is a Lambardar of his village and as such he gets some remuneration from the Government in lieu of some services which are being rendered by him; Since he is joint with his brother respondent No. 1, the latter is disqualified, *quo* his brother being a Lambardar. In this connection the learned counsel for the petitioner has argued that the Lambardari is a joint family property in which each member, on account of the eldest member being the Lambardar is interested as much as the Lambardar and as such he is disqualified under the provisions of Article 191(1) (a) of the Constitution. The allegation of the petitioner about the respondent No. 1 being a member of the Joint Hindu family with his brother Maniram who is a Lambardar, has been denied by the respondent No. 1 and some evidence has been led by both the parties to prove their respective contentions, which in our opinion is absolutely not necessary and irrelevant in view of the position of the most fundamental principles of law relating to the Joint Hindu family and the provisions of Article 191(1) (a) of the Constitution which are as under:—

"A person shall be disqualified for being chosen as, and for being, as member of the Legislative Assembly or Legislative Council of a State—(a) if he holds any office of profit under the Government of India or the Government of any state specified in the first schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder."

Even if it were to be assumed for the sake of argument, that Lambardari is an office of profit within the provisions of law, it is only the holder of the Lambardari in question who will be disqualified to be a member of a State Legislature

but not the other members of his family who are joint with him, as the disqualification in question is personal so far as the holder is concerned and does not affect the others. The second argument which was advanced by the learned counsel for the petitioner in this connection, as far as we have been able to understand it, was that Lambardari held by Maniram, the brother of the respondent No. 1 should be presumed to be joint family property of his and respondent No. 1 and as such a disqualification for the latter. But he ultimately realised the weakness and fallacy of his argument and did not press this point any further though he had also contended that Lambardari in question is a contract within the provisions of S. 7(d) of the Representation of the People Act, 1951, which, according to the above reasoning was a disqualification for respondent No. 1.

11. The last point covered up by this issue which has been most vehemently pressed is that since the thumb mark of the seconder of the nomination paper of the respondent No. 1 has not been attested by the Returning Officer, as required by Rule 2(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, the nomination paper is invalid and as such should have been rejected by the Returning Officer. Rule 2(2) of the rules runs as under:—

> "For the purposes of this Act or these rules, a person who is unable to write his name, shall, unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper if he has placed a mark on such instrument or other paper in the presence of the Returning Officer or the Presiding Officer or such other officer as may be specified in this behalf by the Election Commission and such Officer on being satisfied as to his identity has attested the mark as being the mark of that person."

The rejection of this nomination paper is governed by sub-section 2 of section 36 of the Representation of the People Act, 1951 which does not lay down that the nomination paper shall be rejected on the grounds of non-compliance with the provisions of sub-rule 2 of Rule 2 of the above Rules. According to clause (c) of this sub-section, the Returning Officer may reject a nomination paper, if after summary enquiry he thinks:—

> "that the signature of the candidate or any proposer or seconder is not genuine or has been obtained by fraud."

12. At the time when the nomination paper in question was filed before the Returning Officer or even when it was taken up for scrutiny by him no such objection regarding the signature of the candidate or proposer or seconder was raised. Accordingly, we have to consider whether the non-compliance of the provisions of sub rule 2 of rule 2 of the Rules of the Representation of the People (Conduct of Elections and Election Petition) Rules, 1951, invalidates the nomination paper A very great stress has been laid by the learned counsel for the petitioner that the provisions of sub-rule 2 of Rule 2 should be very strictly construed and any non-observance of these provisions must invalidate the nomination paper. But it seems that he has lost sight of one very important fact namely that this is not a non-observance of the provisions of law committed by the candidate himself, but it is an omission of performance of one of the duties by the Returning Officer, which in our opinion should not penalise the candidate and we do not think that the intention of the legislature in providing sub-rule 2 of Rule 2 of the Rules was to throw out the candidate's nomination paper on account of non-observance of these provisions by the Returning Officer. It appears that as the identity of the thumb mark of the seconder on the nomination paper of the respondent No. 1, in this case, had not been challenged, the Returning Officer probably did not think it necessary to put his attestation. The words in sub-rule 2 of Rule 2 of these Rules *viz*:—

> "and such officer on being satisfied as to his identity has attested the mark as being the mark of such person".

suggest that the attestation by the Returning Officer becomes imperative and necessary only when the proposer or seconder has not put his thumb mark in his presence or when he has a doubt as to his identity. But in this case what we find is that no such objection as to the identity of the seconder was raised at the time of scrutiny nor was his thumb mark challenged. Besides that we feel that since this sub-rule casts upon the Returning Officer a duty to attest the thumb mark of any person, the provisions are not necessarily of a mandatory character, but they are simply directory so far as the candidate is concerned, as he cannot be made to suffer on account of the negligence of the Returning Officer. In this connection our attention has been drawn to Maxwell's Law of Interpretation, at

page 374, where it has been observed that "When a public duty is imposed and the statute requires that it shall be performed in a certain manner or within a certain time or under any specified condition, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative." In the same book on page 379, it has been observed that "where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the Legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or in other words, as directory only. "

13 It has also been observed by their Lordships of Calcutta High Court in the case of Mathura Mohan Saha and others *Versus* Ramkumar Saha and Chitagong District Board reported in 1916 Calcutta (A.I.R.) 136 at page 143 as under:—

> "It is well settled that where powers and rights are granted with the directions that certain regulations or formalities shall be complied with it is neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred; Caldow *Versus* Pixell (1877), 2 C.P.D. On the other hand where a public duty is imposed and a statute requires that it shall be performed in a certain manner or within a certain time or under other specified conditions, such prescriptions may well be regarded as intended to be directory only when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements be deemed essential and imperative."

14. In this connection the respondent has examined the seconder Bago as R.W. 5 who has stated in his evidence that he had put his thumb mark in the presence of the Returning Officer, Niranjan Singh. Sukhram, R.W. 7 the proposer of the nomination paper in question has also stated that he put his signature in the presence of the Collector who was the Returning Officer and so also Bago put his thumb mark there in the presence of the same Returning Officer. In view of this evidence which has not been controverted by the petitioner, we can not possibly come to a conclusion that the non-observance of the provisions of sub-rule 2 of Rule 2 of the Rules, 1951 should penalise the candidate respondent No. 1 as it was the breach of duty of the Returning Officer and not that of the candidate. If we are to accept the interpretation which has been put on the provisions of this rule by the learned counsel for the petitioner, then the dereliction of duty whether intentional or otherwise by or on the part of the Returning Officer would result in the invalidation of the nomination paper of a candidate who can not be blamed for this state of affairs as no duty has been cast upon the candidate under any provisions of this Act or the Rules made thereunder that he should see that the thumb marks in his nomination paper are attested by the Returning Officer before the same is taken up for scrutiny. The idea underlying sub-rule 2 of rule 2 of these Rules seems to be that at the time of the presentation of the nomination paper, if the Returning Officer finds that there are any thumb marks affixed therein he should satisfy himself as to their genuineness or ask the parties to remain present on the date of scrutiny for this purpose. But if the thumb marks have been put in his presence, as the evidence in this case shows, he need not put his attestation nor can the nomination paper be said to be invalid for want of such a attestation. Our attention has been drawn by the learned counsel for the petitioner to a judgment of the Barnala Tribunal in the case of Shri Narotam Singh *Versus* Shri Desraj and others reported in the Government of India Gazette Extraordinary dated 5th March, 1953 at page 711, with the remarks at page 719, and great reliance has been placed by the learned counsel on this judgment namely that the omission of the attestation by the Returning Officer of the thumb mark of the seconder is fatal to the nomination paper. We have gone through this judgment very carefully and find that the only point that was urged for the petitioner in that case was that this rule 2(2) of Rules 1951 was intended to apply to "Marks" only and not to thumb impressions but the Tribunal did not agree with this interpretation and held that the word "marks" include "thumb marks" but so far as the point which is involved in this case is concerned and which has been discussed in detail above, does not seem to have been raised nor has it been discussed in detail in the case before the Barnala Tribunal, and we do not think that any observation without a thorough and detailed discussion of the law can be said to be the deciding factor. Accordingly we come to the conclusion that the omission of the attestation as required by sub-rule 2 of Rule 2 of the above rules is not fatal to the respondent No. 1's nomination paper and feel that the Returning

Officer in holding that this is merely an irregularity was right in not rejecting the nomination paper and we therefore answer this issue accordingly. No other point has been pressed by the learned counsel for the petitioner under this issue.

15 *Issue No* 2.—This issue relates to the allegations regarding corrupt practices alleged to have been resorted to by the respondent No 1 in the election in question which have been described in detail in the list filed by the petitioner with the petition. As some of these corrupt practices were vague and had not been stated with precision as required by section 33(2) of the Representation of the People Act, we clarified some of them by recording the statement of the learned counsel for the petitioner before framing the issues. The only corrupt practices which have been pressed by the learned counsel on behalf of the petitioner during the course of his arguments are (1) that the respondent No 1 persuaded the Nayak community of Suratgarh Tehsil to vote for him and not to vote for the petitioner or any other candidate by making an offer and promise in writing to them on 17th December, 1951, to the effect that he would get them allotted land if they voted for him and in support of this he has put very much reliance upon the writing Annexure A which is alleged to be made by the respondent No. 1 on 17th December, 1951 (2) that the Panches of Nayak community passed a resolution on 16th December, 1951 at the suggestion of and with the connivance of the respondent No 1 that they would vote for the latter in consideration of the promise for the grant of land the breach of which would entail punishment or penalty on the members of the Nayak community (3) that the respondent No. 1 and his workers held out promises on behalf of the former that he as a member of the Land Allotment Committee and the Vihar Committee for Suratgarh, will do favours to the persons who would vote for him, (4) that the respondent No 1 interfered with the free exercise of franchise of the Nayak community by threats intimidation, inducement like gratifications etc. on 16th 17th of December, 1951 and also other dates in December 1951 and January, 1952 (5) that the respondent No. 1 on 19th and 20th of January 1952 procured lorries jeeps and trucks either himself or through his agents for carrying the electors from Vijaynagar and other places to Pampura polling stations, (6) that he gave gratifications to his workers and voters beyond the expenses shown by him, and (7) that the return of election expenses is false in some respects the details of which have been given by the petitioner's learned counsel in his statement on 14th of November, 1952 which are given in para. No. 5 above and they are items 1 to 7.

16. We now discuss the details of evidence led in this case by both the parties regarding the various corrupt practices which have been enumerated above.

17. (a) *Inducement, threats etc. offered to the Nayak community.*—The petitioner alleges that the respondent No. 1 approached the Nayak community of his constituency to vote for him and in consideration, he promised to get them land allotted and that he shall secure for them other favours in case he was returned. In support of his contention the learned counsel has suggested that in pursuance of this inducement, the Nayak community held a meeting at Suratgarh on 16th December 1951, the sum and substance of which is alleged to have been incorporated in the writing produced in this case which is marked as Annexure B to the petition Ex. 2, which purports to suggest as under:—

> "That at a meeting held on 16th December, 1951 at Suratgarh of the Nayak Community people decided that the five persons called Panches of the said community namely Pema Ram, Baga Ram, Mansa Ram, Jessa Ram and Adu Ram shall carry on the propaganda on behalf of the congress and if any person of the Nayak Community from amongst the 24 villages left the congress and joined the other party or carried on propaganda or voted against it, then the above Panches shall have the right to inflict fine upon him which shall be borne by him. If out of these 5 Panches any Panch left this party, he will also be liable to punishment which he will have to bear and further shall be expelled from the congress for 5 years.
>
> The 5 Panches mentioned above have been accepted to be the Panches on behalf of all the members of the Nayak Community, who have promised solemnly that they will serve their brethren and breach of this shall make them liable for arrest Further the people of the Nayak community shall do what these five Panches ask them to do."

This writing is alleged to have been signed and thumb marked by 16 members of the Nayak Community It is further contended by the learned counsel for the petitioner that in pursuance of this resolution having been passed on 16th December, 1951 and on being approached by the members of the Nayak Community, the respondent No. 1 executed a writing signed by him on 17th of December, 1951 which has been filed with the petition as annexure A. the photograph copy of which has

been marked as Ex 29/P W 6 The sum and substance of the contents of Annexure A is as under —

> "That I accept the decision which was made in the meeting of the Nayaks held at Suratgarh on 16th December, 1951 to the effect that in the election all the Nayaks will vote for the congress, and that a demand which has been made from the candidate that in the event of his success he will try to give them convenience in connection with the grant of land is hereby accepted by him I shall put in my best efforts in connection with the grant of land in favour of Nayaks and also untouchables but it shall also be my main principle to serve the poor Sd/ Manphoolsingh, dated 17th December 1951'

The writing in annexure A has been denied by respondent No 1 to be that of his and he has pleaded complete ignorance not only about it but also about any meeting of Nayaks having been held on 16th December 1951 and also the writing contained in annexure B and as such the petitioner thought it necessary to examine Shri Devan K S Puri a handwriting expert of Patiala as a witness who was cross examined at great length by the learned counsel for respondent No 1 and in rebuttal of this evidence the respondent No 1 likewise examined one Shri D R Nanda another handwriting expert of Delhi But during the course of arguments very surprisingly no reference was made to the evidence of the expert P W 6 by the learned counsel for the petitioner presumably because he realised that the expert's evidence could not carry the case any further and consequently the learned counsel for the respondent No 1 also treated the evidence of his expert in the same manner But our task has been made less difficult by completely ignoring the evidence of the experts in this case who as it appear seem to have caused more confusion about the identification of the disputed handwriting contained in annexure A than throwing any light to enable us to come to a definite conclusion as to the said writing Therefore the learned counsel for the petitioner has relied upon the oral evidence led by him in order to prove that annexure A was written by the respondent No 1

First we are dealing with annexure "B' the writing of which is alleged to have been made by one Shri Hanuman Persad P W 1 who was at that time the Secretary of the Suratgarh Congress Committee and which incorporates the resolution alleged to have been passed by the Nayak Community of Tehsil Suratgarh the purport of which has been given above Hanuman Persad, P W 1 who is said to have written out this annexure "B" in his evidence says that he wrote the contents of this annexure at the dictation of Jessa Ram, Adu Ram and Ganpat Ram and at the time when he wrote the contents there was no thumb impression or signature on it but these three persons namely Jessa Ram, Aduram and Ganpat Ram put thumb impressions of all the persons in this annexure about which he asked these persons who told him that he need not worry about it and that the other persons were under their influence His evidence clearly shows that the meeting referred to in annexure "B" had not taken place in his presence nor any such resolution was passed when he was present It clearly suggests that some members of the Nayak community asked this man to write out the contents of annexure "B" which he very conveniently did The next witness on this point for the petitioner is one Pema P W 5, who is alleged to have been present at the time of the passing of the resolution by the Nayak community in the meeting of 16th December 1951 He has said that no writing was made in annexure 'B in his presence but only thumb marks of 7 or 8 persons and signatures of 4 or 5 persons of the Nayak community had been taken and that the writing in annexure 'B" was made by Hanuman Prasad after the thumb impressions and signatures had been taken at the asking of Manphool Singh Another witness on this point is Gopi P W 8 who gives entirely a different story namely that the respondent No 1 about 8 days before polling put some salt in water and made him and some other Nayaks drink and take oaths to the effect that they will vote for him and some writing was made on which his and other thumb marks were obtained Another witness on behalf of the petitioner is Ladu P W 11 who says that the signatures and thumb marks of some of the Nayaks were taken in a register by Manphool Singh which was already written and so also is the evidence of P W 12 Lachhman Singh This evidence which has been relied upon by the learned counsel for the petitioner in proof of the meeting which is alleged to have been held on 16th December 1951 where some members of the Nayak community collected and passed the resolution embodied in annexure "B" does not appear to us to be satisfactory and convincing but it is contradictory in most of the important points The petitioner's case so far as this meeting is concerned is that it was held in the congress office at which P W 1 Hanuman Pershad was present but this Hanuman Persad does not depose to this effect Even the evidence of Pema who is said to be one of the) attended the meeting does not support this version much e of all these witnesses prove that any such meeting was held in pursuance of a request from the respondent

No. 1. The evidence of P.W. 1 Hanuman Persad and P.W. 5 Pema shows that signatures and thumb marks were taken first and writing made afterwards, which creates considerable suspicion in our minds as to the genuinness of the writing in annexure B and consequently the meeting of Nayak referred to therein. Besides this the original writing in annexure B, which we have very carefully examined, appears to be in somewhat unusual manner, in as much as the writing does not start from the top red line but it starts very much above the red line and the entire portion of this writing shows that it has not been made in the usual course of things, but suggests that the writing was made over the thumb marks and signatures which seen to have been taken first. During the course of arguments it was conceded by the learned counsel for the petitioner that it is possible that the meeting referred to in annexure B may have been held one day or two or three days or some days before the writing was actually made and he did not definitely assert that this writing was made on the same date when the meeting in question was held. Another strong circumstance which creates considerable amount of doubt in our minds as to the genuinness of annexure "B" is that the thumb impressions of (1) Nanak Ram, (2) Arjan, (3) Jessaram, (4) Hamira Ram, (5) Adu Ram and (6) Kalu Ram were taken on the date of hearing in the presence of the Tribunal for the purpose of comparing them with those appearing in annexure "B", out of which Shri D. R. Nanda the Finger Expert for respondent No. 1, R.W. 16 has stated in his evidence that he could compare only the thumb marks of Nanak Ram, Arjan Jessa Ram and Hamira Ram as the others two are faint and illegible. He was then asked to compare them with his instruments in our presence and after comparing the same with the corresponding thumb marks in annexure "B", he has given his opinion that the thumb impressions of four persons which were taken in the Court and have been marked as Ex. A-10/R.W. 16 do not tally with those in annexure "B". This fact fortifies us in our conclusion that the writing in annexure "B" is not really a genuine writing of any meeting held on 16th or before with a view to come to a decision that the Nayaks were induced or given threats by the respondent No. 1 that they should vote for him and in case of default, punishment or fine shall be imposed upon them or that any Panches were appointed for this purpose. One more important fact which has been brought on the record by the respondent No. 1 is that he has examined Jessa Ram, R.W. 1, Adu Ram, R.W. 2, Nanak, R.W. 3, Kalu, R.W. 6, Hamirah, R.W. 8, Arjan, R.W. 9, Moti Ram, R.W. 12 and Ganpat Ram, R.W. 14, who are stated to be the parties to the meeting of 16th December, 1952 and also Signature to the contents of annexure "B" and these persons have in unequivocal terms stated that no such meeting was ever held by the Nayak Community where any such decision was taken nor any writing which is contained in annexure "B" was ever effected to which they put their signatures or thumb marks. Even the petitioner's evidence either of himself or of his witnesses on this point as to the day when this meeting is said to have been held is very vague and unconvincing and in the absence of any positive and definite evidence, we are afraid it will be rather very dangerous to conclude from this evidence that any such meeting was held where any such resolution as is referred to in annexure "B" was passed. To also hold that the writing in annexure "B" was made in pursuance of a bargain made by the respondent No. 1 with the Nayak community will be to accept the testimony of the witnesses who are not able to depose about any particular fact correctly. Some sort of evidence to prove the genuinness of annexure B, has been led on behalf of the petitioner to this effect that this register was shown to some persons who have been examined in this case. Since we are of the opinion that the writing of annexure "B" is not a genuine writing and also since we hold that no such meeting has been proved to have been held on 16th December, 1951, or even before the question of discussing this evidence of having shown the register containing Annexure 'B' to some of the witnesses becomes absolutely unnecessary.

The next question is about the execution of the writing in annexure "A", which is alleged to have been made by the respondent No. 1. In order to prove this writing, the petitioner has examined Hanuman Persad, P.W. 1, Ishardas, P.W. 2, Ramkrishan, P.W. 3, Nandram, P.W. 17 and the petitioner himself P.W. 23. The petitioner also examined Shri Dewan K. S Puri, P.W. 6 in order to prove the writing in annexure A but as stated above, the learned counsel for the petitioner made absolutely no reference to this evidence In order to find whether the writing in annexure "A" has been actually made by the respondent No. 1 it is necessary to consider the facts on the record and also the contents of annexure "B" which, according to the petitioner, has preceded, the annexure "A" The case of the petitioner is that respondent No. 1 had first approached the Nayak Community to vote for him and in order to assure him he asked them to hold a meeting and effect some kind of writing which is said to be contained in annexure "B". After the writing in annexure "B" is said to have been made, and given to Manphool Singh, some of the Nayaks were told that they committed a mistake in giving such writing to the respondent No. 1 and that they should also have a writing in return from him

in order to bind him and therefore they asked the respondent No. 1 to give them a writing which is said to be the original of annexure "A". We have very carefully examined the writing in annexure "A" and find that it is very improbable that according to the case put forth by the petitioner about the holding of a meeting on 16th December, 1951 and consequently the coming into existence of the writing in annexure "B" and also the writing in annexure A, that the writing in annexure A could ever have been made by respondent No. 1. Some of the important circumstances which make it very difficult for us to accept the petitioner's contention that the writing in annexure "A" is that of respondent No. 1, are that this writing could have been made by the respondent No. 1, it is somewhat unusual inasmuch as (1) both the writings should appear in one and the same register, (2) the contents of the writing in annexure A are entirely different from those of the writing in annexure "B", (3) the story put forth by the petitioner's witnesses that 2 or 3 more registers were prepared in which similar writings were affected and which were given to some persons who have not been examined nor any effort has been made to produce the said registers. Besides this the evidence of the petitioner regarding the other similar registers and their disappearance is very unsatisfactory and unconvincing. His story that he came in possession of this register containing the writings of Annexures A and B by giving sweets and a sum of Rs. 10 to one Gopal the servant of the respondent No. 1 is rather fantastic and unworthy of any credit. If really the writings in Annexures A and B were the outcome of any bargain that was made by the respondent No. 1 with the members of the Nayak community of tehsil Suratgarh, it is rather unusual that both the writings would have appeared in one and the same register, but in the natural course of things, the writing made by the Nayaks would have appeared in one register which ordinarily should have remained in the possession of the respondent No. 1 whereas the writing made by the respondent No. 1 in another register which should have remained in the possession of Nayaks. It is not proved before us that the registers containing the writings Annexures A and B were left in the custody of the respondent No. 1 as the evidence on this point is contradictory on which no reliance can be placed. Pema, P.W. 5 in his evidence has stated that three registers which contained the writings Annexures A and B were given one each to him, Jessa of Hardaswali which is denied by him and one other person of Suranwali whose name he does not remember and that the respondent No. 1 about a month after the polling came to his place and took away the register on some pretext. In the absence of any corroborating evidence on this point, we are not prepared to accept the testimony of this witness especially when no effort has been made to produce the other registers or to prove their loss. Some evidence has been led on behalf of the petitioner that the register containing annexures A and B was shown by the petitioner to some persons out of whom one Shri Satya Narayan, Advocate, P.W. 20 has been examined and in his evidence he has stated that the register in question was shown to him and that the respondent No. 1 had admitted before him that he had made a writing in such register and given to the Nayaks. This witness was one of the candidates in the last general elections from this constituency against the respondent No. 1 and the respondent No. 2 in this petition and we feel that having been defeated in the elections, he will not hesitate to give any evidence against the respondent No. 1. Even if we were to take into consideration his evidence regarding the contents of Annexures A and B, it goes more against the case of the petitioner than against that of the respondent No. 1. In his evidence this witness has stated that these two writings in the register in question, the first containing signatures and thumb marks of some Harijans and the second which purported to be that of the respondent No. 1, mentioned that the Harijans had put salt in lota and sworn by it which is not a fact as no writing makes a mention of this fact.

The other evidence in proof of the writing in Annexure A to be that of the respondent No. 1, which has been referred to by the learned counsel for the petitioner is the evidence of Ishardas P.W. 2, Ram Kishan P.W. 3, Nand Ram P.W. 17 and the petitioner P.W. 23, who are said to be acquainted with the handwriting of the respondent No 1 and who identify the writing in Annexure A to be that of his. In order to find out whether the evidence of these witnesses proves the writing in question to be that of Manphoolsingh, we have to scrutinise this evidence in the light of the above discussion regarding the holding of a meeting by the members of the Nayak community and the passing of the resolution on 16th Decebmer and its acceptance by the respondent No. 1. So far as the evidence of Ishardas P.W. 2 is concerned, we are of the opinion that his evidence connot be accepted as he appears to be a discontended person against the respondent No. 1, who has stated that he was expelled from the congress just before the elections. Similarly the evidence of Ramkishan is also interested as he is the employee of Ishardas P.W. 2. The evidence of Nandram P.W. 17 on this point is also not convincing in as much as at one time he stated that he is illiterate and again said that he could read the contents of Annexure A. Lastly is the evidence of the

petitioner himself which in view of the circumstances mentioned cannot be accepted by us. A very strong circumstance which goes against the writing in Annexure A to be that of the respondent No. 1 is that the petitioner's most important and principal witness, Hanuman Prasad, P.W. 1 could not identify the writing in question to be that of the respondent No. 1 when he was put to a question in examination-in-chief. Besides this when Chetram, R.W 11 was shown the writing in Annexure A in cross-examination, he said that it is not that of Manphool Singh. Taking this evidence as a whole along with the evidence regarding the whole story set up by the petitioner, we are of the opinion that the writing in Annexure A has not been proved to be that of the respondent. Even the evidence of the two experts examined by the parties is contradictory and as such also we feel that it will not be safe for us to rely upon the evidence of the petitioner, which is interested, vague and convincing.

Even if we were to proceed on the basis that the two writings Annexures A and B are genuine, as has been argued by the learned counsel for the petitioner, then also the petitioner's case regarding the corrupt practices alleged by him with reference to these annexures, does not improve at all. We have been asked by the learned counsel for the petitioner that we should accept the suggestion that a meeting of the Nayaks was held on 16th December, 1951 in which the resolution was passed which is contained in Annexure B, after which on the insistence of some of the Nayaks, the respondent No. 1 executed the writing in Annexure A. We are afraid we cannot come to this conclusion in view of the evidence led on behalf of the petitioner which is far from precise and is contradictory in material points. The allegations of corrupt practices are of a very serious nature and are wrought with very dire consequences and the quality of evidence which is required to prove them should nearly be the same as is required in a criminal case as has been held in the Lyllpur Mohammedan constituency case reported on page 526 of the Indian Election Cases by Sen and Poddar, though an enquiry before an Election Tribunal does not necessarily stand on the same footing as a criminal trial. We agree with the dictum which has been laid down in the case of Mian Haq Nawaz Versus Malak Khan Mahomedkhan stated on page 176 of Vol. II of Jagat Narain's Indian Election Petitions, that suspicion, however strong cannot take the place of positive proof, and before basing a decision on circumstancial evidence, every reasonable hypothesis consistent with the innocence of the person charged must be excluded. In our opinion the writing Annexure B does not prove that in pursuance of an approach made by the respondent No. 1 a meeting of the Nayaks was held where it was resolved that all the votes of the Nayaks shall be given to the congress candidate in consideration of the latter's promise to get them allotted some land. The writing in Annexure B in fact has kept us in complete darkness as to the time, date and place where the meeting of the Nayaks was held, when the resolution in question was passed. The evidence of all the witnesses viz., Hanuman Prasad, P.W. 1, Pema P.W. 5, Gopi P.W. 8, Ladu P.W. 11, Lachmansingh P.W. 12 and Nandram P.W. 17, is contradictory, vague and does not prove in the slightest degree the allegations of the petitioner regarding undue influence, threats, coercion etc. alleged to have been exercised by the respondent No. 1 on the members of the Nayak community.

So far as the writing in Annexure A is concerned, even if it be assumed for the sake of argument that it has been made by the respondent No. 1 in his own hand, we do not think that the case of the petitioner in any way improves, as annexure A taken by itself does not give the least suggestion that the respondent No. 1 has entered into any bargain with the members of the Nayak community in particular that he will get them land in consideration of their giving him votes. It only says in general terms that he will help them in getting land and also render his assistance whatever is possible not only to Nayaks, but to untouchables and others, in case he is returned. In our opinion this kind of assurance is not a corrupt practice in the eye of law. The learned counsel for the respondent No. 1 has urged before us that since the petitioner has not expressly given the full particulars as to the names of the parties alleged to have committed such corrupt or illegal practices along with the date and place of their commission, this Tribunal should not consider them at all. It is no doubt true that the particulars of the alleged corrupt practices as given by the petitioner are wanting in certain matters which must be mentioned as required by section 83(2) of the Representation of the People Act, 1951, which in this case are the dates and places of exercise of undue influence by the respondent No. 1, against the members of the Nayak community but since we have discussed the evidence of these practices in some details and come to a conclusion that the petitioner has failed to prove them, it is not necessary to go into this question. Accordingly we hold that the petitioner has failed to prove this corrupt practice alleged by him against the respondent No. 1.

(b) Procuring of Jeeps, Lorries and Trucks on 19th and 20th January, 1952 for carrying the electors from Vijaynagar and other places to the Rampura Polling Station:—

This allegation of the petitioner is contained in para. 6 of the list of corrupt practices, filled by him along with his petition. The only witnesses examined on this point are one Kela Singh, P.W. 14 and the other Maniram P.W. 19. Kelasingh P.W. 14 has stated that he carried some of the voters of the respondent No. 1 in a motor, jeep and truck from Suratgarh to Rampura polling station who were from Prempura, Karnisar, Bhagsar Khurd, Madia, Bhimla and Dhania, but no where has he said that he carried them from Vijaynagar to the Rampura polling station as alleged in the list of the corrupt practices attached to the petition. Even the petitioner has not a word about this. Besides this he has stated in his evidence that he did not tell the petitioner about these matters. If it is so, it has not been explained as to how this witness has been examined about the matter which were not within the petitioner's knowledge. The next witness examined on this point is Maniram P.W. 19 whose evidence is more vague, and uncertain unreliable than that of P.W. 14. He only says that the voters of the respondent No. 4 were brought in a motor truck which did not bear any registration numbers. He does not say anything about the places from where they are brought, nor has he given the name of person or persons, who brought them, nor the names of any of these voters. The respondent No. 1, has denied these allegations and the petitioner himself does not say a word about these corrupt practices in his evidence. Taking into consideration the entire evidence on the record, we are of the opinion that this kind of evidence is absolutely insufficient to prove such serious allegations, and we hold that the petitioner has failed to prove them.

So far as the remaining corrupt or illegal practices are concerned, the learned counsel during the course of his argument, made no mention of them and we also find that there is absolutely no evidence so as to call for any discussion. We, therefore, hold that the petitioner has failed to prove them.

As a result of the above discussion, we are of the above opinion that the petitioner has failed to prove the corrupt or illegal practices mentioned by him in his petition, against the respondent No. 1 and consequently we decide this issue against the petitioner.

Issue No. 3.—This issue relates to the petitioner's allegations contained in the ground No. 1 of the grounds on which the election of the respondent No. 1 has been challenged by the petitioner, which consists of seven sub-grounds, out of which sub-grounds a, b, e and g have already been discussed in details under issue No. 1, as they are the same and as such it is not necessary to discuss. So far as the remaining objections contained in sub-heads c, d and f of the ground No. 1, are concerned, the learned counsel, during the course of his arguments has not pressed them as no evidence has been brought on the record to substantiate them. Therefore we decide this issue against the petitioner.

Issue No. 4.—The petitioner's allegations so far as this issue is concerned, are that the respondent No. 1 has filed a false return of election expenses and the items to which he has taken objection are mentioned in his statement recorded on 14th November, 1952 the date when the issues were framed. They have been mentioned in detail in para. 5 above. The learned counsel for the petitioner during the course of his arguments has stated before us that he presses his case only against items Nos. 2 and 7 mentioned by him in his statement recorded on 14th Novmeber, 1952, which are reproduced in para. 5 of this judgment. The learned counsel for the respondent No. 1 has argued that this Tribunal should not look into these items at all as they were not mentioned in the list of corrupt and illegal practices filed by the petitioner along with his petition, as required by Section 83(2) of the Representation of the People Act, 1951, but have been subsequently mentioned by him on 14th November, 1952 when the petition regarding them was barred by time. In our opinion this objection should have been taken when these particulars of various items were obtained from the learned counsel for the petitioner or at the latest when the petitioner led evidence to prove them. In view of this, we do not feel inclined to rule out of our consideration the discussion of these items on merits.

(a) *Item No.* 2.—Rs. 2.000 paid as hire of Motor belonging to Birbal, s/o Maniram of Jogewalla but a receipt for Rs. 1,000 taken. The only witness examined on this point is Birbal P.W. 22 himself who says that the respondent No. 1 had taken his Weapon Carrier car during the election days at the rate of Rs. 40 per day and kept it for 52 days for which he paid him Rs. 2,080 and took a receipt from him for this amount. This evidence of the witness is absolutely uncorroborated by any other testimony, is unreliable and untrustworthy in as much as the

amount mentioned by him in his evidence is Rs. 2,080 but in statement dated 14th November, 1952, it is Rs. 2,000. The petitioner has not been put any question on this point. As against this the respondent has stated in his evidence that he actually paid Rs. 1,000 to this witness for which he obtained his receipt Ex. P-7 and in his support has further examined one Gokal R.W. 15 who had scribed the receipt after the sum of Rs. 1,000 was paid to Birbal P.W. 22 and also one Sultan Singh R.W. 4 who was driving the car in question for Manphoolsingh in those days. Thus the evidence led by the petitioner on this point is absolutely unworthy of any reliance as against the evidence led by the respondent No. 1. Accordingly we come to the conclusion that the petitioner has failed to prove that the respondent No. 1 paid Rs. 2,000 for the hire of the car in question and obtained a receipt for Rs. 1,000.

(b) *Item No.* 7.—Payment of Rs. 312 to Chetaram the respondent No. 1's uncle, as hire charges of the loud-speaker. The petitioner's allegations, so far as this item of expenditure is concerned, is that it is absolutely a false item in as much as the respondent No. 1 never took any loud-speaker from his uncle Chetaram of which he has examined Nand Ram P.W. 17 who only says that Chetaram did not possess any loud-speaker. As has been observed in these proceedings, the petitioner has not been put any question on this point. As against this the respondent No. 1, has examined his uncle Chetaram R.W. 11 who has proved that he owned a loud-speaker which was taken on hire by the respondent No. 1 for his election work, for which he received Rs. 312 from the respondent No. 1 and passed a receipt. It is in no way surprising that the witness R.W. 11 who is the uncle of respondent No. 1 must have charged the hire charges for the loud-speaker. So we are of the opinion that the petitioner has failed to prove his allegations relating to this item.

Since the learned counsel for the petitioner pressed only the above two items under this issue, which we have discussed and about which we have come the conclusion that the petitioner has failed to prove his allegations, we decide this issue against the petitioner.

Issue No. 5.—No arguments were advanced by the learned counsel for the petitioner on this issue. Besides this we are also of the opinion that the evidence led by the petitioner on this point is so meagre and vague that it is not possible to attach any credence to it. This is obviously the reason why the learned counsel for the petitioner has not pressed this point. Accordingly this issue is also decided against the petitioner.

Issues Nos. 6 and 7.—The learned counsel has not pressed these issues.

Issue No. 8.—As a result of our findings on the above issues arising in this case, we hold that the petitioner is not entitled to any relief and his petition stands dismissed. There only remains the question of costs. Taking into consideration the serious nature of allegations made by the petitioner against the respondent who had to examine as many as sixteen witnesses including the handwriting expert summoned from Delhi, and engaged as many as four lawyers we think that the proper order for costs will be that the petitioner shall bear his own costs and shall also bear the costs incurred by the respondent No. 1 in these proceedings. We fix the counsel's fee at Rs. 500 Respondent No. 3 shall bear his own costs.

FINDINGS

Issue No. 1	... In the negative.
Issue No. 2 ... .. —	... In the negative
Issue No. 3	... In the negative.
Issue No. 4	.. In the negative.
Issue No. 5	.. Not pressed.
Issue No. 6	.. Not pressed
Issue No. 7	Not pressed.
Issue No. 8	Petition dismissed. with costs.

ORDER

The petition is dismissed. The petitioner shall bear his costs and shall also bear those incurred by the respondent No. 1. Counsel's fees fixed at Rs. 500 only shall bear his costs.

GOVERDHANDAS T. GAJRIA, *Member.*
M. P. ASTHANA, *Chairman.*
M. C BHADARI *Member.*

MEMO OF COSTS

Petitioner—			*Respondent No. 1*—	
1. Vakalatnama	Rs.	2/-	1. Vakalatnama	2/8
2. Advocates fees	Rs.	1000/-	2. Advocate's fees	500/
3. Process fee	Rs.	2/-	3. Process fee	1/8
4. Cost of witnesses	Rs.	770/12	4. Cost of witnesses	1080/2
5. Miscellaneous	Rs.	40/3	5. Miscellaneous	65/-
	Rs.	1823/15		Rs. 1649/2

(Sd) M. P. ASTHANA, *Chairman.*
(Sd.) M. C. BHANDARI, *Member.*
GOVERDHANDAS T. GAJRIA, *Member.*

ANNEXURE 'A'

ELECTION PETITION No. 240 OF 1952

Sahi Ram—*Petitioner.*

Versus

Manphool Singh and others—*Respondents.*

Order on petitioner's application under section 86(2) (a) and (b) of the Representation of the People Act, 1951.

This is an application made on behalf of the petitioner under section 86(2) (a) and (b) of the Representation of the People Act, 1951, challenging the validity of the appointment of the Chairman and the Advocate Member on this Tribunal, on the ground that both of them are not the recommendees of the Rajasthan High Court, as required by clause 2 of section 86 and as such their appointment on this tribunal, by the Election Commission, India, is in contravention of the provisions of section 86(2) and (3) of the above act. This application is opposed by the learned advocate for the respondent. The relevant provisions of section 86 of the Representation of the People Act, 1951 are as under:—

"86. *Appointment of Election Tribunal.*—(1) If the petition is not dismissed under section 85, the Election Commission shall appoint an Election Tribunal for the trial of the petition.

(2) For the purpose of constituting such Tribunal the Election Commission shall obtain from the High Court of each State (other than Jammu and (Kashmir):

(a) a list of persons who are or have been District Judges in the State and who are in the opinion of the High Court fit to be appointed as members of the Election Tribunals, and

(b) a list of advocates of that High Court who have been in practice for a period of not less than ten years and who are in the opinion of the High Court fit to be appointed as such members and shall maintain the lists by making such alterations therein as the High Court may from time to time direct.

(3) Every Tribunal appointed under sub-section (1) shall consist of—

(a) a Chairman who shall be either a person who is or has been a Judge of a High Court or a person selected by the Election Commission from the list maintained by it under clause (a) of sub-section (2) and

two other members of whom one shall be selected by the Election Commission from the list maintained under clause (a) of sub-section (2)

and the other shall be selected by it from the list maintained under clause (b) of that sub-section:

Provided that where the petition for the trial of which a Tribunal is to be appointed is in respect of an election to the Legislative Assembly or the Legislative Council of a State, no person who belongs to the judicial service of another State shall be selected for appointment as a member of the Tribunal except with the consent of the Government of the other State."

The contention of the learned Advocate for the petitioner is that sub-clause (2) of Section 86 lays down that the Election Commission shall appoint, as members, on the Election Tribunals in a particular State, only those persons whose names have been put in the lists sent by the High Court of that State, to the Election Commission. In other words he means to suggest that a person whose name has been included in the lists under either of the sub-clauses of clause 2 of section 86 by a High Court of any State, cannot be appointed on the Election Tribunal constituted by the Election Commission, in another State, the High Court of which has not included his name in any one of its lists. In support of his contention he had laid great stress on the words "that State" and "the High Court" in sub-clause (a) and that High Court and "the High Court" in sub-clause (b). In regard to the appointment of the personnel of any Election Tribunal, by the Election Commission, the learned Advocate has relied upon the words "the list" in sub-clauses (a) and (b) of clauses 3 of section 86. He further contends that we should look to the intention of the Legislature in interpreting the words "the High Court", "the State", "that High Court and "the list" in clauses 2 and 3 of section 86, and the only interpretation which can be given to the words is the one which is giving. We are afraid, we do not agree with this interpretation of the provisions of section 86 clauses 2 and 3 of the Representation of the People Act, 1951 Clause 2 of section 86 lays down that the Election Commission shall for the purpose of constituting the Election Tribunals, call for the lists of persons who are or have been the District Judges, in the various states and the advocates of not less than ten years practice, who in the opinion of the High Courts of these states are fit to be appointed as members of such Tribunals; whereas clause 3 of the same section lays down the class of person who shall constitute such Tribunals and the power of appointment has been given by the statute to the Election Commission under clause 1 of section 86. Clauses 2 and 3 when read together do not suggest that the Election Commission which has been given full powers under clause 1 to appoint the Election Tribunals, should confine its selection to the persons whose names have been put in the lists *mentioned in sub-clauses (a) and (b) of clause 2 by a High Court*, for appointment as members on the Tribunals, in that particular state in which the said High Court is situated; on the contrary these provisions very clearly and unambiguously mean that the Election Commission shall call for two lists from the various High Courts, one under sub-clause (a) and the other under sub-clause (b) and maintain two such lists by consolidating all the lists received by it from the various High Courts and constitute the various Tribunals as laid down in clause 3. It is, as a matter of fact, left to the discretion of the Election Commission to appoint a person on an Election Tribunal, outside the state, the High Court of which has recommended his name. This is very clear from the proviso to sub-clause (b) of clause 3 of section 86 which contemplates appointment of a member of judicial service of another state with the consent of the Government of that State. It is argued by the learned advocate for the petitioner that this proviso is redundant and unnecessary. It is not possible for us to accept this argument that the Legislature inserted this proviso without any meaning. The presence of the words "the list maintained by it" in sub-clause (a) and the words "the list maintained under clause (b).", suggest the maintenance of two separate lists by the Election Commission and not the various lists supplied by the High Courts; and the Election Commission has been given powers to appoint members on the Tribunals from the two lists as required by clause 3 and maintained by it under clause 2(a) and (b).

If the interpretation of the learned Advocate were to be accepted, it will lead to many anomalies inasmuch as the powers of constituting the Election Tribunals under clause 1 of section 86 will, to some extent, be exercised by the High Courts in the selection of the personnel of the Election Tribunals, in place of the Election Commission, which will be against the very clear words of section 86. We, therefore, come to the conclusion that the appointment of the Chairman and the Advocate Member of this Tribunal is not in contravention of the provisions of section 86(2) (a) and (b). This petition, that we take, is also supported by some of the observations of the Select Committee which are as under:—

"We are therefore of the view that the personnel of the Tribunal should be drawn from (a) persons who are or have been High Court Judges

(b) persons who are or have been District Judges and who are in the opinion of the High Court fit to be appointed as members of the Tribunal, and (c) advocates of High Courts of not less than ten years standing who are in the opinion of the High Courts fit to be so appointed. We think that the Chairman of the Tribunal should be either a person who is or has been a High Court Judge or a person who is or has been a High Court Judge or a person who is or has been a District Judge. We have revised this clause accordingly."

We, therefore, do not see any substance in the points raised the application which we dismiss and set down the case for further hearing on 14th November 1952.

(Sd.) M. P. ASTHANA, *Chairman.*

(Sd.) GOVERDHANDAS T. GAJRIA, *Member.*

(Sd.) M. C. BHANDARI, *Member.*

Dated the 11th November 1952.

ANNEXURE 'B'

ELECTION PETITION NO. 240 OF 1952.

Sahiram—*Petitioner.*

Versus

Manphool Singh and others—*Respondents.*

Order on petitioner's application for amendment of the particulars of corrupt practices

This is an application, made by the petitioner, for amendment of the list of corrupt practices, mentioned in the schedule attached to his petition, by the addition of the following particulars:—

"The ballot boxes containing the ballots of the election in question lying at Nohar and Suratgarh Tehsils police stations were actually tampered with between 20th January 1952 and 29th January 1952 before their (ballot boxes) being opened for counting and the ballots polled by or given to the petitioner were taken out and put into that of Respondent No. 1's boxes to increase the number of votes polled by him which has caused the victory of Respondent No. 1 by such a vast majority. This has materially affected the Election in detriment to the petitioner. The application for amendment is opposed by the learned advocate for the respondent No. 1.

In support of this application the learned Advocate of the petitioner has relied upon clause 3 of section 83 of the Representation of the People Act, 1951 and argued that this Tribunal has power to amend the list of particulars given by the petitioner for the purpose of ensuring a fair and effectual trial of the petition. It is admitted in this application and also by learned Advocate of the petitioner in his arguments that the above ground is a new one which was not mentioned in the petition through mistake. As a matter of fact, clause 3 of section 83 does not contemplate the amendment of the list of particulars, but it merely the amendment of the particulars which are already mentioned in the list attached to the petition. Amendment of the list of particulars and amendment of the particulars included in the said list are two different things in as much as the former will mean the amendment of the petition which is not warranted by the provisions of section 83.

The petitioner has himself mentioned in his application that the above ground which he seeks to be included in the list, by way of amendment, is a very important matter which was left out by him through mistake. This the contrary, is a sufficient reason for not allowing the amendment as the petitioner, by granting the amendment will be allowed to raise a new ground in the list of the particulars, which we cannot do under the law. Accordingly we dismiss the application.

(Sd.) M. P. ASTHANA, *Chairman.*

(Sd.) GOVERDHANDAS T. GAJRIA, *Member.*

(Sd.) M. C. BHANDARI, *Member.*

Dated the 18th November 1952.

[No. 19/240/52-Elec.III/8373]

S.R.O. 1134.—WHEREAS the election of Shri Kishan Lal Lamror, as a member of the Legislative Assembly of the State of Ajmer, from the Gagwana constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Buda, S/o Shri Kallu Rawat, Village Madarpura, District Ajmer;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL STATE OF AJMER.

ELECTION PETITION NO. 235 OF 1952

CORAM:

Shri J. D. Sharma—*Chairman,*

Shri C. Jacob—*Members of the Election Tribunal.*

Shri S. N. Agarwal—*Members of the Election Tribunal.*

Shri Budha son of Kallu Rawat of Village Madarpura, represented by Shri Debi Dayal Bhargava Advocate, Ajmer.

Versus

1. Shri Kishenlal Lamror Advocate Kutchery Road, Ajmer, represented by Shri Permatma Swarup Advocate, Ajmer.
2. Thakur Onkarsingh Istimrardar of Baghsuri at present at Ajmer.
3. Shri Shivnarain Singh Advocate, Imperial Road, Ajmer.
4. Shri Hardayal Mahajan of Village Gugwana.
5. Shri Khema Rawat of Village Gowari—*Respondents.*

JUDGMENT

Petitioner Shri Budha has by this petition challenged the election of respondent No. 1 Shri Kishanlal Lamror to the Ajmer State Legislative Assembly from Gugwana Constituency.

All the four respondents were candidates from the above mentioned constituency but the election was contested only by respondents No. 1, 4, and 5. Respondent No. 3 had withdrawn his candidature and the nomination of respondent No. 2 was rejected as he was held to be a holder of an "office of profit" being the Istimrardar of Baghsuri. On the result of the election respondent No. 1 was declared duly elected.

The grounds on which the petitioner has challenged the validity of election of respondent No. 1 are:—

(1) That the respondent No. 1 Shri Kishenlal Lamror at the time of the nominations was a member of the Advisory Council of the Chief Commissioner Ajmer State and member of the Provincial Transport Authority, and also an Assessor for the Railway Rates Tribunal and as such was holding an 'office of profit' within the meaning of Article 102 of the Constitution of India read with Section 17 of the Government of Part C States Act.

(2) That the result of the election had been materially affected by the improper acceptance of the nomination of respondent No. 1 and improper rejection of the nomination of respondent No. 2 Thakur Onkarsingh.

(3) That respondent No. 1 was guilty of corrupt practices within the meaning of Section 123 of the Representation of the people Act. It was alleged by the petitioner that respondent No. 1 himself and through his agents and others interfered with the free exercise of the electoral rights of the voters of village Palran and prevented them from going to the Polling Station by inducing them to believe that they would incur divine displeasure and spiritual censure in case they moved out of their village on the election day. For this purpose respondent No. 1 was said to have given twelve bottles of wine and Rs. 100/- to one Ghisa, Bhopa of village Palran to exercise his influence on the voters of that village.

(4) That the Return of election expenses filed by respondent No. 1 was false in material particulars.

Written statements have been filed by respondents Nos. 1, 4, and 5, the last two have supported the petitioner's case. Respondent No. 1 is the only contestant. He denied all the allegations about corrupt practices. As regards the allegation that he was a holder of the office of profit he admitted that he was the member of the Chief Commissioner's Advisory Council and of the State Transport Authority but he pleaded that this did not amount to holding an office of profit. As for his being an Assessor of the Railway Rates Tribunals he denied all knowledge and also alleged that he never applied to be appointed as an assessor nor his consent was obtained and that he was not informed by the Central Government or through any other authority, that he had been appointed as an assessor. In the alternative he pleaded that an assessor of the Rates Tribunal was not a holder of an office of profit.

From the pleadings following issues were framed:—

1. Is the petitioner an Elector in the Gugwana Constituency?
2. Is the respondent No. 1 a holder of the office of profit as alleged in para. 3 of the petition?
3. Was the nomination of respondent No. 1 improperly accepted? Has the result of the election been materially affected on this account?
4. Was the nomination of respondent No. 2 improperly rejected and has the result of the election been materially affected on this account?
5. Has the respondent No. 1 been guilty of corrupt practices as alleged in para. 3 of the petition and as disclosed in the particulars appendix (A) and appendix (B) attached with the petition?
6. Is the Return of Election Expenses filed by the respondent No. 1 false in material particulars and not in accordance with the prescribed rules?
7. Should the election of respondent No. 1 be declared void?

Our findings on the above issues are as under:—

Issue No. 4.—We take up this issue first as it goes to the root of the case.

The expression 'office of profit' is not defined in the Constitution or the Representation of the People Act, but it is not a term of art and its meaning and import are well understood. The essential characteristics of an 'office of profit' are:—

(1) It involves an appointment by the State in one form or the other
(2) It carries emoluments payable mostly periodically.
(3) Is for a limited period.
(4) Is terminable.
(5) Is not assignable.
(6) Is not heritable.
(7) The holder of the office must be *sui-juris*.

It has to be judged in the light of the above characteristics whether an Istimrardar is the holder of an office of profit. According to Wilson's Glossary p. 345 an Istimrar is a farm or lease granted in perpetuity by the Government or Zamindar at a stipulated rate. An Istimrardar is the holder of a perpetual farm or lease. Under s. 20, Regulation II of 1877, an Istimrari estate means an estate in respect of which an Istimrari Sanad has been granted before the passing of the Regulation by the Chief Commissioner with the previous sanction of the Governor General in Council and Istimrardar means the person to whom such a Sanad has been granted or any other person who becomes entitled to the Istimrari estates in succession to him. The status of an Istimrardar has, therefore, to be determined on the basis of the Sanad in his favour. The main terms and conditions of the Sanad are:—

"I. The Istimaradar shall at all times remain faithful in his allegiance to Her Majesty Qeen Victoria, Her Heirs and Successors, and perform all the duties which, in virtue of such allegiance, may be demanded from him. If any question arises as to whether this condition has been faithfully observed, the decision thereon of the Governor General in Council shall be final.

IV. He shall, in accordance with custom, make reasonable provision for the support of such surviving relatives of his immediate predecessor as are hereinafter mentioned, and, in the event of any dispute arising as to such provision, shall conform without objection to the orders he may receive from the Chief Commissioner or other

Principal Officer charged with the administration of Ajmer. The relatives above referred to are the following:—Grand parents, parents, widows, brothers, sisters, sons, whether natural born or adopted, daughters, nephews, nieces and grand-children.

X. He shall furnish to the Deputy Commissioner all statistics and information for which he, under the orders of Government, may call and shall keep up such establishments as may be declared necessary for the preparation of such statistics, or for the supply of such information.

XI. He shall report all crime occurring on his Estate, and assist in its detection, or repression, in such a way as he may be directed, he shall not harbour offenders within his Estates, and he shall use his best endeavours to preserve order and prevent crime, and whenever called on by the Officers of Government for assistance he shall render every aid and assistance in his power."

Particular stress is laid on the condition that an Istimrardar will owe allegiance to Queen Victoria and her successors and the Governor General will be the final Judge of whether an Istimrardar has been true to his allegiance. The mere fact that an Istimrardar under the Sanad owes allegiance to the Crown cannot, by itself, lead to the conclusion that he is a holder of an office of profit. Every citizen, in a way owes allegiance to the Crown who is now replaced by the Constitution of India. It is open to question if in view of the fundamental rights mentioned in the Constitution of India, allegiance can be demanded of an Istimrardar which cannot be demanded of any other citizen of the State.

Also the provision in the Sanad for providing maintenance to a certain class of relations does not make an Istimrardar a holder of an office of profit or detract in any manner from his status as an ordinary citizen. The provision is a necessary corollary to the mode of succession which is by rule of primogeniture. At the same time, it creates an obligation and does not confer a right on the Istimrardar. It is most significant that in the Sanad there is no condition for resuming the Estate and there has been no instance in which an Estate has been resumed. Thakur Gopalsingh the old Istimrardar of Kharwa was detained under Regulation III of 1818 for his activities considered disloyal at that time but the Estate was not resumed and it was at his own instance that Thakur Gopalsingh abdicated the Estate in favour of his son. It clearly means that the Estate of an Istimrardar is not terminable, as an office of profit is at the option of the State and also of its holder.

An "Istimrari Estate" does not carry any emoluments as an office of profit does. The contention of the petitioner is that an office of profit may have perquisites not essentially in the nature of salary and an Istimrardar has the largest perquisite in the shape of a fixed charge. The term "Istimrar" itself connotes a farm or lease in perpetuity at a fixed charge. That is no doubt a valuable perquisite inasmuch as the Estate is not liable to enhancement of charge but an Istimrari Estate is not an exception in this respect. There is permanent settlement in the whole of Bengal and in the eastern Districts of the U.P. Hence the mere fact that the Estate is held in perpetuity at a fixed charge does not make it an office of profit Further reliance is placed on the provisions of Regulation II of 1877 relating to Istimrari Estates. S. 21 provides that all tenants in an Istimrari Estate shall be presumed to be tenants-at-will. Under S. 22, an Istimrardar cannot alienate his Estate except for a life. S. 23 lays down the rule of succession and provides that no adoption made by a widow shall be deemed valid until confirmed by the Governor General in Council. Under S. 24, any question as to the right to succeed to the Istimrari Estate arising in a case not provided for by S. 23 shall be decided by the Governor General in Council or by such officer as he may appoint in this behalf subject to the proviso that the Governor General in Council may grant a certificate declaring that the matter is one proper to be determined by a civil Court S 25 says that all claims for maintenance against an Istimrardar by any member of his family shall be preferred to the Chief Commissioner whose decision thereon shall be final S. 27 confers on an Istimrardar the privilege of being tried for a criminal offence by the District Magistrate or Session Judge with the previous sanction of the Chief Commissioner. Under S. 28, no Istimrardar can be arrested in execution of any process of any civil or revenue Court except with the previous sanction of the Chief Commissioner. And under S. 29 no decree for money against an Istimrardar can be executed after his death and no decree for money can be passed against any person as the representative of a deceased Istimrardar.

Certain privileges are, no doubt, attached to an Istimrari Estate, but neither singly nor collectively are they such as to make an Istimrari Estate an office of profit. It is not uncommon to find provisions in the old enactments laying down that the tenants of a particular Estate shall be tenants-at-will. Under S. 21, there is only a presumption that the tenants are at will. It does not mean that there cannot be tenants other than tenants at will. The provision relating to an adoption by a widow only places a disability on her and is by no means a characteristic of an office of profit. Similarly the provisions relating to succession and maintenance do not confer on an Istimrardar the status of a holder of an office of profit. The privilege conferred by S. 27 is inconsistent with the provisions of the Constitution of India and their validity is open to question. It is also doubtful if the provision really confers a privilege. S. 28 does confer a privilege on an Istimrardar but women are entitled even to a greater privilege as they cannot be arrested at all in decree for money. We are, therefore, of the opinion that none of the provisions in Regulation II of 1877 confers on an Istimrardar the status of the holder of an office of profit.

It is further pointed out that an Istimrardar has the privilege of distilling liquor without a licence. Under S. 67 of Regulation No. 1 of 1915, the State Government is empowered to confer this privilege on any person. It is not one of the privileges mentioned in the Sanad. It is further pointed out that an Istimrardar can keep arms without having to pay a licence fee. Under S. 27 Arms Act, the State Government can exempt any person from the licence fee. It is also urged that an Istimrardar is under an obligation to provide force for the maintenance of law and order. Reliance in this connection is placed upon a circular dated 22nd November, 1951. Under S. 17 Police Act, the services of any person can be requisitioned to help in the maintenance of law and order. Similar duties are prescribed by SS. 42, 43 and 44 Cr. P.C. It is noteworthy that under the Scheduled Districts Act 1871, the Criminal Procedure Codes of 1861 and 1871 did not apply to the province of Ajmer. Some provisions peculiar to the province had, therefore, to be made for the maintenance of law and order and it was why a duty was cast on an Istimrardar to provide necessary force when so required. It will, thus appear, that an Istimrardar lacks almost all the essential elements of a holder of an office of profit.

(1) He is not an appointee of the State (All the present Istimrardars are by virtue of succession).

(2) He does not have the emoluments which the holder of an office of profit has. Indeed he gets no remuneration from the State revenues.

(3) He holds the estate in perpetuity and not for a limited period.

(4) The estate is not terminable.

(5) The Estate is assignable at least for life (An office is never assignable).

(6) The Estate is heritable. (An office is seldom heritable).

(7) The holder of an Istimrari Estate may not be *sui-juris*. All these characteristics materially distinguish an Istimrari Estate from an office of profit and it is impossible to hold that an Istimrardar is the holder of an office of profit.

It has been pointed out that an Istimrardar is absolutely subservient to the Government and the policy underlying Article 102 of the Constitution is that all persons who are under subservience or tutelage to the government should be disqualified for the membership of a legislature. Subservience or the so called tutelage to the government is not a test of judging whether a particular person holds an office of profit as it is not possible to lay down any standard for judging the degree of subservience. Article 102 places a restriction on eligibility for election and must therefore be strictly interpreted and no office which does not satisfy the essential elements of an office of profit as commonly understood can fall under the scope of Article 102.

Reliance has been placed upon the decision reported in the *Gazette Extraordinary* dated 23rd August 1952 in which Shrimati Hansa Mehta was held to be disqualified for election on the ground that as Vice-Chancellor of the University of Baroda she held an office of profit under Ar. 102 of the Constitution. She was appointed Vice-Chancellor by the State Government and held the office for a limited period. She was also removeable by the State under certain circumstances. The decision has therefore no bearing on this case. Further reliance has been placed upon the decision of the Election Commission reported in the Gazette of India Extraordinary dated 2nd April 1953. That case also has no bearing as the members of the Legislative Assembly were the appointees of the State Government and as members

of the District Advisory Council drew certain emoluments. On behalf of the respondent No. 1 reliance is placed upon the decision of the Cuttack Tribunal reported in the Gazette Extraordinary dated 24th February 1953 in which it was held that a Sarbarakar was not a holder of an office of profit, although many of the incidents consistent with the position of an office holder are common to the Sarbarekar.

We are therefore of opinion that the nomination of respondent No. 2 was improperly rejected.

It is well settled law that the result of an election would be presumed to be materially affected in cases of improper rejection of the nomination of a candidate. The second part of this issue is therefore decided in the affirmative.

Issue No. 1.—This issue is decided in the affirmative. Petitioner Budha is an elector and is shown in the list at No. 14 of the electoral list of village Madarpura which is in Gugwana Constituency.

Issues Nos. 2 *and* 3.—In view of our decision on issue No. 4 the election has to be set aside and it is not necessary to give findings on these two issues.

Issue No. 5.—This issue relates to the allegations about the corrupt practices detailed in appendices "A" and "B" of the petition. The petitioner's case is t respondent No. 1 was guilty of corrupt practices because he brought undue influenc on the voters of village Palran through one Gheesa Bhopa by giving him Rs. 10 and 12 bottles of wine. This Bhopa is alleged to have induced the voters of his village by saying that if they moved out of village on the election day they would incur divine displeasure and spiritual censure. In support of his allegations the petitioner has examined himself and five other witnesses. The story set up by the petitioner was that Respondent No. 1 went to village Palran on 18th January 1952 and had a talk with Gheesa Bhopa. After this meeting, Gheesa Bhopa told the village people that he had an inspiration from the deity that if the villagers went to cast their votes there will be epidemic in the village and children and people will die. The petitioner himself has no personal knowledge about the conversation between respondent No. 1 and Gheesa because he admitted in his cross examination that he went to village Palran for the first time five or six days after the election and that upto the date of election he had no knowledge about this incident. The next witness on this point is P.W. 3 Lalsingh. He has stated that on 18th January 1952 he had gone to village Palran and was told by the voters there that they would vote for Khema, respondent No. 5. When this witness was talking to the villagers, Shri Kishenlal also arrived there, and he took Gheesa Bhopa aside and had a talk with him. He did not hear the conversation of Shri Kishenlal and Gheesa Bhopa. Obviously the evidence of this witness is also of not much help to the petitioner. Similarly P.W. 4 Dhoola has also repeated what Lalsingh has stated. The only direct evidence in support of the petitioner's version is that of P.W. 5 and 6 Balu and Kana. Balu has stated that Gheesa Bhopa announced in the village that he had an inspiration that if any voters gave votes for Khema they would be sent to Pakistan and they and their children would die. Witness Kana does not say that Gheesa Bhopa had restrained the villagers from voting against Khema alone. According to him, Gheesa Bhopa had made a general announcement that if the voters cast their votes there will be epidemic in the village. We are not convinced by this evidence. It is not possible to believe that almost the entire body of voters would play so easily into the hands of Gheesa Bhopa. Secondly, there is sufficient evidence on behalf of the contesting respondent rebutting the petitioner's story. Not only Shri Kishen Lamror has sworn that he did not go to village Palran at all we find that Gheesa Bhopa himself came forward and has stated that he never made any such announcement in the village. If Gheesa Bhopa commanded great influence on the villagers of Palran he would not have taken this risk of shaking that confidence by denying a statement alleged to have been made by him as a result of inspiration. Besides, witnesses Khiyan and Hazari who are also residents of village Palran have supported Gheesa Bhopa's statement that he did not ask the village people not to cast their votes. The fact that the voters of village Palran did not go for casting their votes appears to be on account of an old rivalry between them and the villagers of Barla which was the polling station. Therefore, on appreciation of the evidence on record we are not convinced that respondent No. 1 exercised any influence through Gheesa Bhopa against the voters of Palran preventing them from casting their votes. As for the payment of money and the bottles of wine to Gheesa Bhopa there is no evidence whatsoever which could be taken into consideration. The petitioner has thus failed to prove that respondent No. 1 was guilty of corrupt practices mentioned in para. 3 of the petition.

Issue No. 6.—This issue is decided in the negative for want of any evidence. In fact, it was not pressed.

Issue No. 7.—In view of our decision on issue No. 4, the election of respondent No. 1 should be set aside.

ORDER

The petition is accordingly accepted and the election of respondent No. 1 is declared void and is set aside. Under the circumstances of the case we direct that the parties should bear their own costs.

J. D. SHARMA, *Chairman.*
C. JACOB, *Member.*
S. N. AGARWAL, *Member.*

AJMER,
The 22nd May 1953

[No. 19/235/52-Elec.III/8380.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

PRINTED IN INDIA BY THE MANAGER GOVT. OF INDIA PRESS, NEW DELHI
AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1953